



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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REGIONAL  
ADMINISTRATOR'S  
DIVISION

May 4, 2023

Science Kilner, Regional Environmental Officer  
FEMA Region 10  
130 228<sup>th</sup> Street SW  
Bothell, WA 98021

Dear Science Kilner:

The U.S. Environmental Protection Agency has reviewed the Federal Emergency Management Agency's Notice of Intent to prepare a Draft Environmental Impact Statement related to the National Flood Insurance Program – Endangered Species Act Integration in the State of Oregon (EPA Project Number 23-0009-FEMA). EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The NOI and its supporting documents outline the approach and justification for developing the DEIS. The DEIS is being developed in response to a jeopardy determination of a 2016 Biologic Opinion that was developed by the National Marine Fisheries Service. NMFS recommend implementing a 6-part Reasonable Prudent Alternative when evaluating lands for the National Flood Insurance Program. The draft plan includes changes to information provided to communities, reporting requirements for participating communities, and potential measures communities will need to select to meet key habitat floodplain functions.

EPA supports FEMA's efforts to integrate Endangered Species Act protections into the National Flood Insurance Program in Oregon and NMFS' recommendation of no net loss to the key habitat functions of flood storage, water quality, and riparian vegetation. Given the extensive role of communities in the draft plan to achieve the integration into the program, EPA's enclosed comments include recommendations for providing for meaningful engagement of communities in the NEPA process, including communities with Environmental Justice concerns.

The proposed project has potential to impact water quality, biological resources, cultural resources, and has the potential to disproportionately impact communities with EJ concerns. Because current climate conditions may not be reflective of future climate conditions, EPA recommends the DEIS consider projected future conditions (i.e., the timing, frequency, and intensity of heavy precipitation events) when performing the NEPA analysis. These potential impacts may require additional analysis to better assess and quantify the impacts, design appropriate mitigation measure, and develop monitoring and assessment strategies to evaluate overall effectiveness. The enclosed Detailed Comments provide greater detail regarding EPA's recommendation when developing the DEIS.

Thank you for the opportunity to review the NOI for this project. If you have questions about this review, please contact Scott Schlieff of my staff at (206) 553-4032 and [Schlieff.Scott@epa.gov](mailto:Schlieff.Scott@epa.gov), or me, at (206) 553-1774 or at [Chu.Rebecca@epa.gov](mailto:Chu.Rebecca@epa.gov).

Sincerely,

Rebecca Chu, Chief  
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the  
National Flood Insurance Program – Endangered Species Act Integration Oregon  
May 2023**

**Alternatives Analysis**

The EPA recommends the DSEIS explore and objectively consider a full range of alternatives and evaluate in detail all reasonable alternatives that fulfill the project's purpose and need. We encourage selection of alternatives that protect, restore, and enhance the environment, and we also support efforts to identify and select alternatives that maximize environmental benefits that avoid, minimize, and/or otherwise mitigate environmental impacts.

In accordance with 40 CFR 1502.14, EPA suggests the DEIS present the environmental impacts of the proposed action and alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public<sup>1</sup>. Describe how each alternative was developed, how it addresses project objectives, how it will be implemented, and quantify the potential environmental impacts of each alternative to the greatest extent (e.g., acres of habitat impacted; change in water quality). EPA also recommends comparing the costs and benefits of each of the alternatives, including the costs for required mitigation measures. Further, discuss the reasons for eliminating alternatives to the proposed action.

The four paths approach considered in the draft implementation plan consist of a Model Ordinance (Path A), Ordinance Checklist (Path B), Community Compliance Plan (Path C), and a Habitat Conservation Plan (Path D). Each path considered is intended to aid communities to in their adherence to the recommendations within the 2016 biologic opinion from NMFS. The various pathways provide flexibility to the diverse range of communities that may have differing levels of staffing and resources. This approach also allows for the possibility of community led efforts and a more tailored approach to individual community needs and capacity. EPA recommends the NEPA document detail the incentives and the costs associated with each of the potential pathways so that communities might better understand which pathway might be best suited for them.

**Water Quality**

Reasonable Prudent Alternative (RPA) 2 has the interim measures to be utilized while measures 3, 4, 5, and 6 are phased in. In RPA 2 it states that there should be limited development within a 170-foot riparian buffer<sup>2</sup>. EPA recommends the NEPA document further discuss how 170 feet was chosen for the riparian buffer zone and the adequacy of this width in the various biomes within the action area. EPA recommends that the NEPA document specifically address the adequacy of the proposed buffer width in areas with high potential for channel migration. Discuss the cumulative impacts to downstream areas and include monitoring to determine if the riparian buffers are effectively maintaining optimal temperatures. Ensure adequate buffering is being implemented to limit water quality degradation.

EPA recommends that the DEIS identify and describe within the proposed project area: Waters of the United States; Clean Water Act§303(d) impaired waters; and any existing Total Maximum Daily Loads to address impaired waters. When preparing the DEIS, identify and describe any potential CWA permitting requirements associated with the proposed action, such as CWA§404 permits or CWA§402

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<sup>1</sup> <https://www.ecfr.gov/current/title-40/chapter-V/subchapter-A/part-1502/section-1502.14>, accessed 5/1/2023.

<sup>2</sup> [https://www.fema.gov/sites/default/files/documents/fema\\_draft-oregon-implementation-plan\\_10052021.pdf](https://www.fema.gov/sites/default/files/documents/fema_draft-oregon-implementation-plan_10052021.pdf), accessed 5/1/2023.

permits. EPA encourages aligning regulatory processes as possible when developing the NEPA analysis, (e.g., if it is anticipated that a CWA permitting process will require describing environmental impacts and identifying ways to avoid, minimize and mitigate those impacts- integrate as possible those same considerations into the NEPA DEIS).

### **Biological resources**

As stated in the National Marine Fisheries Service 2016 Biologic Opinion<sup>3</sup>, “proposed action is likely to jeopardize the continued existence of 16 ESA listed anadromous fish species and Southern Resident killer whales, and it will result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species.”

The CWA requires states to adopt Water Quality Standards designating beneficial uses of the waters and setting criteria to protect those uses. Oregon State’s CWA WQS include aquatic life use, criteria to protect that use, and an antidegradation policy.

EPA recommends the DSEIS analyze the impact of the alternatives for this project might have on water quality designated for aquatic life uses under the CWA and other biological resources. Oregon’s WQS provides designated uses for each basin and associated criteria to protect those uses.

An additional tool for identifying where biological resources occur within the proposed project is Essential Fish Habitat under the Magnuson-Stevens Fisher Conservation Management Act.

EPA recommends the DEIS include outcomes of any consultation with U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Oregon Department of Fish and Wildlife where there are potential project impacts to federal or state listed species or habitat impacts.

### **Climate Change**

The goal of the National Flood Insurance Program is to work with communities to adopt and enforce floodplain management regulations that help mitigate flooding effects<sup>4</sup>. Consistent with Executive Order (EO) 14008 on *Tackling the Climate Crisis at Home and Abroad* and EO 13990 on *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crises*, EPA recommends the NEPA document discuss how each of the proposed alternatives considers changing climate conditions.

If projected changes in climate (e.g., increased precipitation events and thus changes in flood risk; climate-driven shifts in species’ geographic ranges) could impact the proposed action, consider likely changes as part of the NEPA analysis. Integrate ESA considerations into the NFIP by considering projected future conditions in addition too current conditions. Identify how ecosystems may change with climatic conditions and how the proposed action may impact or be impacted by those ecosystem changes. Consider the additive and synergistic impacts that some species may experience because of climate change, including climates along protected species migratory paths.

Disclose lessons learned from past practices in developing similar projects if applicable, combined with the need to account for changing climate conditions, to help inform the design and management of the proposed project. Describe how the monitoring program will be used as a feedback mechanism for adaptive management.

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<sup>3</sup> <https://media.fisheries.noaa.gov/2022-01/2016-04-14-fema-nfip-nwr-2011-3197.pdf>, accessed 5/3/2023.

<sup>4</sup> <https://www.fema.gov/flood-insurance>, accessed 5/1/2023.

EPA also recommends that FEMA provide resources within the NEPA document that are locally focused on the anticipated climate changes to assist communities as they examine their flood risk and develop their NFIP applications.

### **Environmental Justice**

The 2021 Draft Implementation Plan<sup>5</sup> states that “implementation of these measures can improve outcomes as diverse as community public safety, environmental, social, and economic well-being” and that “Implementing these measures may also help communities meet their climate, environmental justice, and other goals.” The project website also states that the draft plan comprises changes including reporting requirements for NFIP-participating communities as well as a range of potential measures communities will need to select from to collectively meet a “no net loss” standard of three key natural floodplain functions: flood storage, water quality, and riparian vegetation. The Draft Implementation Plan does not mention how communities can assess for potential environmental Justice concerns<sup>6</sup>.

When reviewing the proposed project for EJ concerns, EPA utilized several key documents, policies, and tools for considering and addressing EJ concerns, which are further described in the following. EPA recommends including these as references in the DEIS.

### ***Executive Orders and Policies***

Executive Order 12898<sup>7</sup> directs federal agencies to identify and address the disproportionately high and adverse human health effects of federal actions on minority and low-income populations, to the greatest extent practicable and permitted by law.

CEQ Environmental Justice Guidance under the National Policy Act<sup>8</sup> (1997) was developed by CEQ in consultation with EPA and other affected agencies as guidance to further assist federal agencies with their NEPA procedures so that EJ concerns are effectively identified and addressed.

EO 13985 on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*<sup>9</sup> should also be incorporated into FERs analysis because it includes a modern definition of equity that clarifies a broader approach.

On April 21, 2023, President Biden signed *Executive Order 14096, Revitalizing Our Nation’s Commitment to Environmental Justice for All*<sup>10</sup> which highlights the need for a whole-of-government effort to confront longstanding environmental injustices and inequities. Consistent with Executive Order 12898 and each agency’s statutory authority, EO 14096 calls on each agency to make achieving EJ part of its mission, including by carrying out environmental reviews under NEPA in a manner that:

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<sup>5</sup> [https://www.fema.gov/sites/default/files/documents/fema\\_draft-oregon-implementation-plan\\_10052021.pdf](https://www.fema.gov/sites/default/files/documents/fema_draft-oregon-implementation-plan_10052021.pdf), accessed 5/3/2023.

<sup>6</sup> <https://www.fema.gov/about/organization/region-10/oregon/nfip-esa-integration>, accessed on 5/2/2023.

<sup>7</sup> <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>, accessed 5/3/2023.

<sup>8</sup> [https://www.epa.gov/sites/default/files/2015-02/documents/ej\\_guidance\\_nepa\\_ceq1297.pdf](https://www.epa.gov/sites/default/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf), accessed on 5-2-23.

<sup>9</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>, accessed 5/3/2023

<sup>10</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/>, accessed on 5/3/23

- analyzes direct, indirect, and cumulative effects of federal actions on communities with EJ concerns.
- considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and
- provides opportunities for early and meaningful involvement in the environmental review process by communities with EJ concerns potentially affected by the proposed action.

EO 14096 also calls on providing opportunities for the meaningful engagement of persons and communities with EJ concerns who are potentially affected by federal activities, including by:

- providing timely opportunities for members of the public to share information or concerns and participate in decision-making processes.
- fully considering public input provided as part of decision-making processes.
- seeking out and encouraging the involvement of persons and communities potentially affected by federal activities by:
  - ensuring that agencies offer or provide information on a federal activity in a manner that provides meaningful access to individuals with limited English proficiency and is accessible to individuals with disabilities.
  - providing notice of and engaging in outreach to communities or groups of people who are potentially affected and who are not regular participants in federal decision-making; and
  - addressing, to the extent practicable and appropriate, other barriers to participation that individuals may face; and
  - providing technical assistance, tools, and resources to assist in facilitating meaningful and informed public participation, whenever practicable and appropriate.

Given that much of the responsibility to conduct the EJ analysis may fall on the NFIP communities, EPA recommends the NEPA document describe how to identify where EJ concerns exist within the project area and how to analyze the direct, indirect, and cumulative impacts from the project. Further, EPA recommends the NEPA document discuss methods for conducting engagement opportunities with communities with EJ concerns and how to incorporate considerations related to concerns raised into decision making processes.

### ***EJScreen***

To identify where EJ concerns may exist within the proposed project area, EPA recommends utilizing our EJScreen mapping tool. Assessing EPA's Environmental Justice Screening and Mapping Tool (EJScreen) information is a useful first step in understanding locations that may be candidates for further review or outreach.<sup>11</sup> EPA considers a project to be in an area of potential EJ concern when an EJScreen analysis for the impacted area shows one or more of the eleven EJ Indexes at or above the 80<sup>th</sup> percentile in the nation and/or state. At a minimum, EPA recommends an EJScreen analysis consider EJScreen information for the block group(s) that contains the proposed action(s) and a one-mile radius around those block groups.

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<sup>11</sup> <https://ejscreen.epa.gov/mapper/>, accessed 5/1/2023.

It is important to consider all areas impacted by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.<sup>12</sup> When assessing large geographic areas, consider the individual block groups within the project area in addition to an area-wide assessment. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.<sup>13</sup> As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJScreen outputs. Further review or outreach may be necessary for the proposed action(s).

### ***Addressing EJ Concerns in the NEPA Process***

To address potential EJ concerns associated with the Proposed Project, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.<sup>14</sup> The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.
- Characterizing project site(s) with specific information or data related to EJ concerns.<sup>15</sup>
- Describing potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Describing block groups that contain the proposed action and at a minimum, a one-mile radius around those areas.
- Describing individual block groups within the project area in addition to an area-wide assessment.
- Supplementing data with county level reports and local knowledge. Include identifying and describing communities that utilize the resources within the proposed project area and occur outside of the immediate 1-mile radius.
- Integrating, where available and appropriate, traditional ecological knowledge in evaluating impacts of the proposed project on communities with EJ concerns.

Additional resources that may be useful in incorporating EJ in NEPA analysis include:

- EPA's Guidance for Incorporating EJ Concerns in EPA's NEPA Compliance Analysis<sup>16</sup>
- Guidance for Consideration of Environmental Justice in Clean Air Act 309 Reviews<sup>17</sup>

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<sup>12</sup> Agencies should define community as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions" (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

<sup>13</sup> <https://www.epa.gov/ejscreen/technical-information-about-ejscreen>, accessed 5/1/2023.

<sup>14</sup> [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf), accessed 5/1/2023.

<sup>15</sup> For more information about potential EJ concerns, refer to the July 21, 2021, Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>, accessed 5/1/2023.

<sup>16</sup> [https://www.epa.gov/sites/default/files/2014-08/documents/ej\\_guidance\\_nepa\\_epa0498.pdf](https://www.epa.gov/sites/default/files/2014-08/documents/ej_guidance_nepa_epa0498.pdf) accessed on 5/2/2023

<sup>17</sup> [https://www.epa.gov/sites/default/files/2014-08/documents/enviro\\_justice\\_309review.pdf](https://www.epa.gov/sites/default/files/2014-08/documents/enviro_justice_309review.pdf), accessed 5/3/2023.



- Memorandum on Addressing Climate Change and Environmental Justice through Reviews Conducted Pursuant to the National Environmental Policy Act and Section 309 of the Clean Air Act<sup>18</sup>
- EPA Legal Tools to Advance Environmental Justice<sup>19</sup>

### **Cultural Resources**

The project encompasses a large area, consisting of most of the state of Oregon. Given this, there is the potential for the project to impact access to various cultural resources.

EPA recommends the NEPA document examine the potential impacts to cultural resources and discuss how to avoid and/or mitigate these adverse effects, especially within communities that have been historically overburdened and unrepresented. EPA recommends the DEIS include anticipated cultural resource impacts, impacted communities, and outreach to be performed to engage these communities.

EPA also recommends the DEIS describe how cultural resources impacts will be managed, and how communities can access information related to those activities (e.g., Oregon's State Historic Preservation Office<sup>20</sup>, Tribal Historic Preservation Offices).

### **Coordination with Tribal Governments**

EPA encourages FEMA to consult with and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the DSEIS describe the issues raised during the consultations and how those issues were addressed, consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

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<sup>18</sup> <https://www.epa.gov/system/files/documents/2022-05/EPA%20Policy%20Memo%20Intergration%20of%20EJ%20and%20Climate%20Change%20into%20NEPA%20309%20review%204-26-2022.pdf>, accessed 5/3/2023.

<sup>19</sup> <https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>, accessed 5/3/2023.

<sup>20</sup> <https://www.oregon.gov/oprd/oh/pages/default.aspx>, accessed 5/3/2023.